

MANDATE

S.D.N.Y. - N.Y.C.
07-cv-9779
Wood, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of April, two thousand eight,

Present:

Hon. José A. Cabranes,
Hon. Sonia Sotomayor,
Hon. Richard C. Wesley,
Circuit Judges.

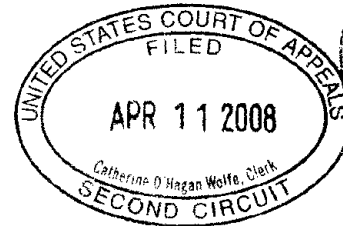
Freddy Martinez,

Plaintiff-Appellant,

v.

Roberto Cardenas,

Defendant-Appellee.



07-5599-cv

Appellant, *pro se*, moves for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion for leave to proceed *in forma pauperis* is GRANTED. It is further ordered that the judgment of the district court is VACATED and the case is REMANDED with instructions to provide Appellant with an opportunity to amend his complaint. See *McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004) (reiterating that *sua sponte* dismissals of *pro se* prisoner petitions are disfavored). Appellant claims that he is a citizen and resident of the Dominican Republic. See 28 U.S.C. § 1332(a)(2) (“[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of a State and citizens or subjects of a foreign state”). We note that if Appellant was admitted to the United States as a lawful permanent resident, he should be deemed a citizen of the State in which he is domiciled. See *Le Blanc v. Cleveland*, 248 F.3d 95, 98 (2d Cir. 2001) (finding that a Canadian citizen residing in New York who obtained legal permanent resident status “was deemed a New York citizen for diversity purposes”). However, because there is nothing in the record regarding

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Mandate issued: 7/3/08

Appellant's immigration status, the district court should make this determination in the first instance.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: 

A TRUE COPY

Catherine O'Hagan Wolfe, Clerk

by 

DEPUTY CLERK